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PARKLAND DEDICATION

A Guideline on Section 35b of The Planning Act



July, 1981

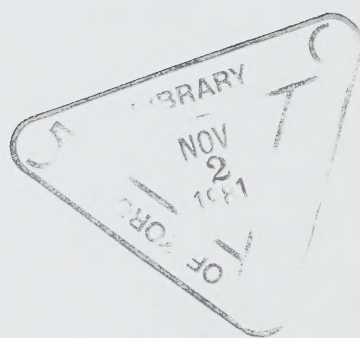
Operations Review Section
Operations Control Branch
56 Wellesley Street, West
Toronto, Ontario, M7A 2K4
Telephone: 965-6418

PARKLAND DEDICATION

A Guideline on Section 35b of The Planning Act


Operations Review Section
Operations Control Branch
July, 1981

Minister
Hon. Claude F. Bennett
Deputy Minister
Richard M. Dillon
Executive Director
Plans Administration Division
G.M. Farrow



INTRODUCTION

This guideline has been prepared to provide an explanation of section 35b of The Planning Act. It replaces Parkland For People which was prepared in 1973 when The Planning Act was amended to incorporate section 35b. Consult with your solicitor on any legal questions.



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1.0 BACKGROUND AND PURPOSE

On December 17, 1973, the Ontario Legislature passed an amendment to section 35 of The Planning Act allowing municipalities:

- a) to require a 5 per cent dedication of land, or cash-in-lieu of such land, for park purposes in connection with development or redevelopment proposals; and
- b) subsequent to submitting and receiving ministerial approval of appropriate official plan policies, to relate parkland dedication to the density of residential development, rather than simply to a percentage of the land area to be developed.

Prior to 1973, The Planning Act only provided for the conveyance of parkland when a plan of subdivision or a consent was being considered. Under sections 29 and 33 of The Planning Act, a 5 percent parkland dedication could be accepted by a municipality for either a residential, commercial or industrial development. The Act also authorized municipalities to accept cash-in-lieu of land, to the value of the land that would otherwise be conveyed.

However, there were no provisions in The Planning Act covering redevelopment at increased densities, or development that did not require a plan of subdivision or a consent. The 5 percent conveyance standard is based on a long used standard of 1 hectare of open space for every 1,000 residents. It provides sufficient open space for low

density developments, but at higher densities the amount of open space per person decreases.

For example, a developer submits an application with two alternative proposals for a 2 hectare property. Proposal 1 is for single family development. Proposal 2 is for townhouses.

Proposal 1

**2 hectare
property**

**40 single
family houses**



136 people



**1/10 hectare open
space for
136 people**



Proposal 2

**2 hectare
property**

**70 unit
townhouse
development**



238 people



**1/10 hectare open
space for
238 people**



This example shows the limitations of the 5 percent conveyance standard as the density of development increases. In proposal 1, there will be 1/10 hectare of open space for 136 residents. In proposal 2, that same 1/10 hectare will have to serve 238 people.

This situation could lead to a severe deficiency of open space over time. Especially when considering that prior to the amendment of The

Planning Act for section 35b, municipalities had no means of obtaining open space from redevelopment projects. Section 35b provides municipalities with an alternative mechanism for ensuring that sufficient land is available for use as open space to meet the needs of both present and future residents.

2.0 THE USE OF SECTION 35b

There are two ways which section 35b may be applied. Under section 35b(1) a municipal council, by by-law applicable to all or part of the municipality, may require that up to 5 percent of the land proposed for development or redevelopment be conveyed to the municipality for park purposes.

Section 35b(3) provides an alternative to the 5 per cent conveyance standard. The municipality may require by by-law, that land be conveyed for park purposes at a rate of one hectare for each 300 dwelling units proposed, or at such lesser rate as may be specified in the by-law.

While the Act is clear on the application of the requirements for parkland dedication, there are several matters which are not explicitly referred to. Several years experience working with the legislation have clarified some of its more subtle elements, and in this regard, it would appear that:

- a) section 35b may not be applied to plans of subdivision;
- b) section 35b may be applied to the residential component of mixed use developments; and
- c) the conveyance standard of one hectare for each 300 dwelling units is a maximum figure. Municipalities should consider establishing a range of rates for different types of development.

3.0 QUALIFICATIONS FOR THE USE OF SECTION 35b

There are no prerequisites for use of the 5 per cent conveyance standard authorized by section 35b(1). A municipality only has to adopt a by-law authorizing the conveyance of land for park purposes as a condition of residential development or redevelopment.

To use the density-based formula of subsection 3, subsection 4 requires that a municipality must have approved official plan policies on the provision of land for park purposes, which have been approved by the minister after the enactment of section 35b on December 17, 1973.

It is important to reiterate that the Act specifies that these policies must be in the official plan. If a municipality is engaged in a secondary plan process, and submits a secondary plan with policies on

the use of section 35b(3) to the minister for approval, as an amendment to its official plan, then the requirements of subsection 4 would be satisfied. The density-based formula of subsection 3 could not be used, however, until the secondary plan is approved by the minister.

If a municipality chooses to use the secondary plan approach, its official plan should only refer to the use of section 35b if a statement is included to the effect that:

Notwithstanding the policies of this plan relating to the provision of lands for park purposes, no application of section 35b(3) of The Planning Act shall be permitted until such time as appropriate secondary plan policies relating to parkland are approved by the Minister of Municipal Affairs and Housing.

As each secondary plan is completed and approved by the minister, its provisions relating to parkland dedication may be enacted by by-law. This ensures that municipalities have the option of using section 35b(3) in their planning program, where the principal policy document is the secondary plan. It permits the tailoring of parkland requirements to the needs of specific districts, with the provisions for the use of section 35b(3) to be phased in upon approval of each secondary plan.

4.0 OFFICIAL PLAN REQUIREMENT

4.1 Why Official Plan Policies Are Required

Because section 35b does not contain provisions for public notice, public hearing or an appeal to the Ontario Municipal Board, it was felt that section 35b(3) should be enacted through a formal statement of municipal policy. The official plan, or an official plan amendment, provides an opportunity for municipal councils to clearly state their parkland dedication policies. The provisions of The Planning Act on the adoption and submission of official plans and official plan amendments ensure that public input can be received, and that an appeal procedure is available where there is an objection to the use of section 35b(3).

The enactment of section 35b(3) was based on the principle that it is desirable to provide parkland in relation to population and need. Section 35b(3) was enacted to correct an inequity because parkland conveyances based on a percentage of lot area did not provide enough parkland for high density residential areas. It also provides an opportunity for municipalities to build into their official plan policies a mechanism for redistributing parkland to areas where deficiencies have resulted. In particular, it provides opportunities to increase parkland in older inner city areas where high density redevelopment, infill housing and residential renovation may be changing the population structure, and thus the demands for parkland.

The ministry has adopted a philosophy of setting an upper limit to the amount of parkland a municipality may require to be dedicated, and within that limit allow municipalities to set their own standards in relation to clearly demonstrated needs. These needs must be reflected in the goals, objectives and policies of the official plan to avoid unjustified use of the higher conveyance standard, and the inequities which would result from its improper application.

4.2 Background Information

Depending on the nature of the planning process undertaken by a municipality, its need for background information will vary. A municipality's parkland needs can be determined through:

- a) an evaluation of existing parkland to assess if it is adequately located, in sufficient quantity, type and size in relation to projected user groups; and/or
- b) a public participation program designed to increase municipal understanding of the perceived needs of area residents for parkland.

The first approach is primarily oriented to data collection and analysis, while the second is less concerned with generating planning standards, and focuses instead on finding out specific perceptions of need from area residents. There are merits to both approaches and they may be used together or separately. Each municipality should concentrate on the approach which is best attuned to local circumstances.

Regardless of the approach pursued, or the relative emphasis placed on either component, municipalities should consider the following background information in determining how to apply the density-based formula of subsection 3.

- a) a definition of lands to be included as parkland;
- b) a hierarchical classification of existing parkland (e.g., tot lot, neighbourhood park, community park, etc.) including the basis for the classification;
- c) the location, size and function of existing parkland;
- d) areas where new parkland will be required because of new development;
- e) the location of parkland associated with private developments which serve the needs of residents of specific developments; and
- f) the accessibility of existing and proposed parkland, taking into consideration public transit routes, pedestrian and bicycle paths and private automobile use.

Taking an inventory of existing parkland and relating it to demographic data and the feedback from a public participation program will lead to the identification of areas of the municipality that are deficient in parkland. It will form the basis for the parkland goals,

objectives and policies of the official plan, and will identify for municipal councils those parts of the municipality where parkland acquisition should be a priority.

4.3 Goals and Objectives

Goals and objectives are key elements of the official plan because they establish the framework for public decision-making. Effective planning requires a clear understanding of the goals that are being pursued, a means of measuring progress in achieving a goal, and guidance on how the goal will be achieved.

The open space goals in an official plan are usually broad and general. For example:

to create an attractive and integrated open space environment that meets the needs of the community.

Objectives are more specific statements which provide a measurable indication of progress in achieving a goal:

integration of the open space system will be achieved through development of a system of pedestrian walkways and bicycle paths throughout the municipality.

The actual policies of the plan should focus on directing municipal activity towards achievement of the goals and objectives of the plan:

Council shall attempt to acquire rights-of-way from all new developments in area C, to create a pedestrian walkway from West Park to Trout Lake.

In preparing policies to enact the alternative conveyance standard of subsection 3, the existing goals and objectives of the official plan should be examined to ensure consistency is maintained. It may be necessary to reassess existing goals and objectives, develop new ones, or apply them differently in various parts of the municipality.

4.4 Official Plan Policies

The policies of the plan should be specific, action-oriented statements. While the content and scope is a matter of local discretion, the following issues should be addressed in the official plan or the amendment:

- . Will the alternative conveyance standard be applied to the entire municipality, or only parts thereof? A map should be included showing the area of application.
- . Does the conveyance standard apply to development (other than plans of subdivision)? Redevelopment? Both?

- . What parts of the municipality are deficient in what type of parkland, and what are the municipality's priorities in providing new parkland?
- . What parkland conveyance standard(s) will be used?
- . Will the conveyance standard vary according to different types of development, and in what way?
- . Will the conveyance standard be applied to mixed use developments, and on what basis?
- . Is the conveyance standard applied differently to senior citizens housing? non-profit housing? the renovation of sub-standard housing? the conversion or deconversion of large, older homes? Municipalities should proceed with caution to ensure that publicly supported specialized housing, or economically marginal private projects are not unduly constrained by requirements designed for large scale developments.
- . What are the physical site and locational criteria to be applied in negotiating with developers on parkland conveyances? For example, proximity to the population being served, schools and community centres; accessibility by private and public transit; topographical suitability of the site; and compatibility with adjacent uses.

- . Under what conditions will the municipality accept cash-in-lieu of land? Conveyance of parkland may not be desirable where, for example, the parcel of land is too small or inappropriately located; in areas with sufficient parkland; and where the condition of the land is not suitable for parkland.
- . Are there situations where a combination of land and cash-in-lieu may be accepted? For example, if a municipality is using a conveyance standard of one hectare for each 400 dwelling units proposed, the developer would be required to dedicate 75% of the site as parkland, if the density of development is 300 units per hectare. In such a situation there may be insufficient land left over for development. Municipalities should specify the circumstances under which a combination of land and cash-in-lieu will be accepted, and the formulas which will be applied.

4.5 Submission Requirements

In many instances the official plan may already contain provisions on some of these issues. These goals, objectives and/or policies should be included in the official plan amendment, supported by background studies and documentation of public participation in the process, when it is submitted to the minister for approval.

5.0 USE AND SALE OF LAND

Land conveyed to a municipality for park purposes under section 35b must be used for parks or such other public purposes as are approved by the minister. If the land is sold within five years of its conveyance to the municipality, the minister's approval is required. After five years, the land may be sold without the approval of the minister.

6.0 ACCEPTANCE OF CASH-IN-LIEU OF LAND

A municipality may accept cash-in-lieu of any land required to be conveyed under this section. The wording of the legislation is such that a municipality may accept cash payments, but cannot require a cash payment. In practice, the option of a cash payment is negotiated between the developer and the municipality prior to final approval of a development.

The money collected from cash payments in lieu of land does not become part of the general municipal revenues. It goes into a special account, the same one as parkland monies collected from plans of subdivision and land severances. The money in the fund must be used to acquire, develop, improve or maintain land for public recreational purposes. Provisions governing management and use of this special account are contained in section 33(11) of The Planning Act.

7.0 LANDS TO WHICH SECTION 35b DOES NOT APPLY

A by-law passed under section 35b does not apply to land that is within a plan of subdivision, where land or cash-in-lieu was accepted previously by a municipality as a condition of approval of a plan of subdivision.

8.0 IMPLEMENTATION

A by-law prepared under subsection 1 or subsection 3 should state that it was passed pursuant to section 35b of The Planning Act. It should also define the area or areas to which it is applicable.

Where a municipality chooses to use the alternative conveyance standard of subsection 3, it may not accept the higher parkland dedication enabled by the by-law until the minister approves the official plan policies submitted pursuant to subsection 4. There is no requirement for the issuance of public notice or submission to the Ontario Municipal Board for approval.

9.0 ADDITIONAL INFORMATION

For additional information or assistance contact:

OPERATIONS REVIEW SECTION

7th Floor, 56 Wellesley Street West
Toronto, Ontario M7A 2K4

(416)965-6418

COMMUNITY PLANNING ADVISORY BRANCH

South West Region
7th Floor
495 Richmond Street
London, Ontario N6A 5A9

(519)673-1611

South East Region
3rd Floor
244 Rideau Street
Ottawa, Ontario K1N 5Y3

(613)566-3801

North West Region
435 James Street South
Thunder Bay, Ontario P7C 5G6

(807)475-1651

North East Region
1191 Lansing Avenue
Sudbury, Ontario P3A 4C4

(705)560-0120

Central Region
2nd Floor
47 Sheppard Avenue East
Willowdale, Ontario M2N 2Z8

(416)224-7635

APPENDIX A - SECTION 35b OF THE PLANNING ACT

Conveyance of land for park purposes	35b. --(1) As a condition of development or redevelopment of land for residential purposes, the council of a municipality may, by by-law applicable to the whole municipality or to any defined area or areas thereof, require that land in an amount not exceeding 5 per cent of the land proposed for development or redevelopment be conveyed to the municipality for park purposes.
Interpretation	(2) For the purposes of subsection 3, "dwelling unit" means any property that is used or designed for use as a domestic establishment in which one or more persons usually sleep and prepare and serve meals. 1973, c. 168, s. 10, <u>part.</u>
Alternative requirement	(3) Subject to subsection 4, as an alternative to requiring the conveyance provided for in subsection 1, the by-law may require that land be conveyed to the municipality for park purposes at a rate of one hectare for each 300 dwelling units proposed or at such lesser rate as may be specified in the by-law. 1973, c. 168, s.10, <u>part.</u> ; 1978, c. 87, s. 21(2).
Official plan requirement	(4) The alternative requirement authorized by subsection 3 may not be provided for in a by-law passed under this section unless the municipality has an official plan that contains provisions relating to the provision of lands for park purposes, which provisions have been approved by the Minister subsequent to the coming into force of this section.
Use and sale of land	(5) Land conveyed to a municipality under this section shall be used for park purposes or such other public purposes as are approved by the Minister, but may be sold with the approval of the Minister within a period of five years from the date of the conveyance thereof to the municipality and may, after such period, be sold without the approval of the Minister.
Cash payment in lieu of conveyance	(6) The council of a municipality may accept money to the value of any land required to be conveyed under this section in lieu of such conveyance and the provisions of subsection 11 of section 33 apply <u>mutatis mutandis</u> to all moneys so accepted.
Lands to which by-law not applicable	(7) A by-law passed under this section is not applicable to land that is within a plan of subdivision approved under section 33 if land in the plan was conveyed to the municipality for park or public purposes pursuant to a condition imposed by the Minister or a payment in lieu of such conveyance was accepted by the municipality. 1973, c. 168, s. 10, <u>part.</u>

